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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

No. 789

MYRON T. SHROUT,
Petitioner,

vs.

JIMMY WILLIAMS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ST. LOUIS COURT OF APPEALS (MISSOURI).

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INDEX

Citations to Opinions Below ____ 1
Jurisdiction ____ 2
Questions Presented ____ 2
Statutes Involved ____ 3
Statement ____ 3
Reasons for Granting Writ of Certiorari ____ 4
Argument ____ 5
Conclusion ____ 10

Appendix A—

Opinion of St. Louis Court of Appeals ____ A-1

Appendix B—

Statutes Involved ____ A-5

Appendix C—

Certificate of Secretary of State ____ A-10

Citations

CASES

Alexander v. *Bush*, 199 Ark. 562, 134 S. W. 2d 519 ____ 4
Brinkhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673 ____ 9, 10
Casteline v. *Goldfine*, 9 Terry 519, 107 A. 2d 915, r. 112 A. 2d 840 ____ 4
Dewey v. *Des Moines*, 173 U. S. 193 ____ 9
Drinkard v. *Eastern Airlines*, (St. L. C. A.) 290 S. W. 2d 175 ____ 4
Ex parte Smith, 358 Ala. 319, 62 So. 2d 792 ____ 4
Grayson v. *Harris*, 267 U. S. 352 ____ 9
Hansberry v. *Lee*, 311 U. S. 32 ____ 10
Hendershot v. *Ferkel*, 144 Ohio St. 112, 56 N. E. 2d 205 ____ 5, 6

Hess v. *Pawloski*, 274 U. S. 352 ..... 4, 5
Holtzman v. *Holtzman*, 278 S. W. 2d 1 8
International Steel Co. v. *Surety Co.*, 297 U. S. 657 9
Kleban v. *Morris*, 247 S. W. 2d 832 8
Morris v. *Argo-Collier Truck Line*, D. C. Ky., 39 F. Supp. 602 5
New York ex rel. Bryant v. *Zimmerman*, 278 U. S. 63 9
Pennoyer v. *Neff*, 95 U. S. 714 10
Powell v. *Knight*, D. C. Va., 74 F. Supp. 191 5
Rogers v. *Alabama*, 192 U. S. 226 9
Shelley v. *Kraemer*, 334 U. S. 1 10
Sorenson v. *Stowers*, 251 Wis. 398, 29 N. W. 2d 512 5
Standard Oil Co. v. *Missouri*, 224 U. S. 270 10
State ex rel. to the Use of Berra v. *Sestric*, 349 Mo. 182, 159 S. W. 2d 786 8
Stone v. *Sinkfield*, 70 Ga. App. 787, 29 S. E. 2d 310 4
Wax v. *Van Marter*, 124 Super. Pa. 573, 189 Atl. 537 ..... 5, 6
Welker v. *Hefner*, (D. C. E. D. Mo.) 97 F. Supp. 630 4
Wood v. *John Hancock Mut. Life Ins. Co.*, 241 S. W. 2d 802 8
Wuchter v. *Pizzutti*, 276 U. S. 13 ..... 5, 6, 7, 8

STATUTES

Nonresident Motorists Law 5
Sections 506.200 to 506.320, Revised Statutes of Missouri, 1949 3
Sections 6308-1, 6308-2, Ohio General Code 6
Section 517.050, Revised Statutes of Missouri, 1949 8

U. S. Code—

Volume 28, Section 1257 2

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MYRON T. SHROUT,
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JIMMY WILLIAMS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ST. LOUIS COURT OF APPEALS (MISSOURI).

Petitioner prays that a writ of certiorari issue to review the opinion of the St. Louis Court of Appeals entered on September 18, 1956, in the cause of Jimmy Williams, plaintiff-respondent vs. Myron T. Shrout, defendant-appellant, No. 29540.

OPINION BELOW.

The opinion of the St. Louis Court of Appeals is reported in 294 S. W. 2d 640, and a copy thereof follows in Appendix A (*Infra*, pp. A1-A4).

JURISDICTION.

The motion for rehearing or, in the alternative, to transfer the cause to the Supreme Court of Missouri was timely filed in the St. Louis Court of Appeals which denied the same on November 13, 1956. Application to transfer the case to the Supreme Court of Missouri was timely filed therein on December 12, 1956, and denied by said court on January 14, 1957. Jurisdiction of this Court is invoked under Section 1257 (3) of Title 28, United States Code.

QUESTIONS PRESENTED.

Was the due process clause of the Fourteenth Amendment to the Constitution of the United States violated when petitioner, who is a resident of the State of Illinois was sued in the magistrate court of the City of St. Louis, Missouri, under the Nonresident Motorists Law, but who never received any form of notice of suit and was denied any opportunity to defend?

May a nonresident be discriminated against by the mere fact that because the Secretary of State, who is designated by the legislature as his agent in the State of Missouri, and who is directed by the act upon receipt of a copy of the petition and summons, to mail it by *"restricted registered mail, deliver to addressee only,"* to defendant's last known address, sufficient notification, even though it is never received by him, nor does he obtain any knowledge of the pending suit, and is not guilty of any evasion of the notice, nor removed from the address given at the time of the accident?

STATE STATUTE INVOLVED.

The pertinent statutory provisions—Non resident Motorists Laws, Sections 506.200 to 506.320, inclusive, Revised Statutes of Missouri, 1949, is printed in Appendix B (*Infra*, pp. A5-A9).

STATEMENT.

Petitioner is a resident of the State of Illinois and a suit was filed in the magistrate court of the City of St. Louis, Missouri, alleging negligence on his part while operating a motor vehicle in Missouri. Service of summons and a copy of the petition was mailed to him at his last known address by "restricted registered mail, deliver to addressee only," as provided for by the statute. He never received any notice of the suit and a default judgment was rendered against him. Several months later his salary was garnisheed in St. Louis which was his first notice that any action had been pending against him. Defendant, through his counsel, entered a special appearance and moved to quash the execution and garnishment, on the ground that the "Court had no jurisdiction over defendant in this suit as appears on the face of the record by the return filed by the Secretary of State of Missouri; that defendant was not served by any process in this case and that he was not found." The motion was sustained by the magistrate. Thereafter plaintiff took an appeal to the circuit court. Said court overruled the motion and defendant appealed to the St. Louis Court of Appeals where the order of the circuit court was affirmed. Petitioner appealed on the theory that the magistrate court had no jurisdiction over defendant, because he was not given any notice of the suit pending against him and was denied an opportunity to de-

fend. That the rendition of a judgment in this case, without actual receipt of notice of suit, as provided for by the restrictive registered mail feature of the statute, denied him due process of law under the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING WRIT OF CERTIORARI.

There is real conflict on principle in the decisions of the various state and federal courts on this question. This Court has never directly ruled on this precise point. It is believed that this Court meant, when notice of suit is sought to be given under Nonresident Motorists Laws, that defendant must receive some kind of notice to accord to him due process. *Hess* v. *Pawloski*, 274 U. S. 352, l. c. 356. That when the Missouri Legislature provided that the petition and summons were to be mailed to defendant by "*restricted, registered mail, deliver to addressee only,*" that he alone must sign for it, and no one else. And that until the registered mail return card was signed by "addressee only," and filed in the case as provided for in the act, there was no service. The following courts in rendering their decisions, have taken the position that defendant must receive some kind of notice of the suit pending against him. *Alexander* v. *Bush*, 199 Ark. 562, 134 S. W. 2d 519; *Ex parte Smith*, 358 Ala. 319, 62 So. 2d 792; *Casteline* v. *Goldfine*, 9 Terry 550, 107 A. 2d 915, r. 112 A. 2d 840; *Stone* v. *Sinkfield*, 70 Ga. App. 787, 29 S. E. 2d 310; *Welker* v. *Hefner*, (D. C. E. D. Mo.) 97 Fed. Supp. 630 (3); *Drinkard* v. *Eastern Airlines*, (St. L. C. A.) 290 S. W. 2d 175.

In this opinion the St. Louis Court of Appeals has taken a contrary view, holding that when the notice is sent by the secretary of state, irrespective of whether defendant ever obtains any notice of suit, it is sufficient. It is partially supported by the following cases cited in its opin-

ion. *Hendershot* v. *Ferkel*, 144 Ohio. St. 112, 56 N. E. 2d 205, Hart, J., dissenting; *Sorenson* v. *Stowers*, 251 Wis. 398, 29 N. W. 2d 512; *Morris* v. *Argo-Collier Truck Line*, D. C. Ky., 39 F. Supp. 602; *Wax* v. *Van Marter*, 124 Super. Pa. 573, 189 Atl. 537; *Powell* v. *Knight*, D. C. Va., 74 F. Supp. 191. However, the facts in said cases are not analogous with the instant case. Thus the due process clause of the Fourteenth Amendment to the Constitution of the United States does not give equal protection to citizens of all states on this alleged right.

ARGUMENT.

Petitioner conceded that the Nonresident Motorists Law of Missouri was constitutional as it meets the test as set out by this Court: 1) provision in the statute for the designation of a state officer as agent for defendant (to confer jurisdiction upon the court of the subject-matter), and 2) a provision for making it reasonably probable that notice of suit is communicated to the defendant (to confer jurisdiction over his person), *Wuchter* v. *Pizzutti*, 276 U. S. 13, but that some form of notice had to be received by defendant to give him an opportunity to defend. *Hess* v. *Pawloski*, 274 U. S. 352, l. c. 356. The Legislature restricted the delivery of the registered mail and therefore no form of notice was ever communicated to this petitioner. He was a traveling salesman, living in East St. Louis, Illinois, with his wife and family, working out of St. Louis, Missouri, for an auto parts firm, traveling in several states and would be away from home from one to two weeks at a time. This Court will take judicial notice that no agent or member of his family could sign for the "restricted registered mail, deliver to addressee only," and he therefore could not obtain any knowledge of the suit

from the mere fact that the Secretary of State had mailed the petition and summons, nor was he notified in any other manner. It is pointed out that plaintiff first directed that the petition and summons be mailed to Box 122, East St. Louis Illinois (Appendix A, p. A1, and Transcript of Record), and the next time to Box 81, East St. Louis, Illinois (Appendix A, p. A2). The certificate of the Secretary of State of the State of Missouri filed in the case in the magistrate court clearly shows on its face (Appendix C, pp. A10-A11) that *he did not refuse to accept the registered letter.* Nor did the respondent file the unsigned registered return receipt card in the pending case as required by Sec. 506.270, of the act (Appendix B, pp. A7-A8). In fact the unsigned registered return receipt was returned to respondent's counsel who never brought it to the attention of the magistrate court and it was never filed in the case when taking the default judgment. It was this omission and the fact that the certificate of the Secretary of State showed the letter was never delivered which prompted the magistrate to quash the execution and garnishment. The case of *Hendershot* v. *Ferkel,* 144 Ohio St. 112, 56 N. E. 2d 205, chiefly relied upon by the St. Louis Court of Appeals, is bottomed upon a statute that does not "restrict" the registered letter to be "delivered to addressee only." Ohio General Code, §§ 6308-1, 6308-2. The Missouri statute makes it plain that no one except the defendant is to receive and receipt for the mail, which was the obvious intention of the legislature, and contrary to the decision in this case. This Court has never said that the defendant need not receive any notice of suit, even in *Wuchter* v. *Pizzutti,* 276 U. S. 13, under circumstances as complained of here, although the decisions of some of the cases cited by the lower court infer such is the situation. In *Wax* v. *Van Marter,* 124 Super. Pa. 573, 189 Atl. 537, cited by the St. Louis Court of Appeals, defendant did have an opportunity to

defend. Said court at local citation on page 539 expressed its understanding of *Wuchter* v. *Pizzutti, supra,* as follows: "The general trend of the decisions is toward sustaining the validity of the service of process if there is reasonable probability that the requirements of the statute were complied with and that the defendant received actual notice." The controlling facts in those cases are distinguishable from the case at bar, and furthermore, in the decision of this Court in the case of *Wuchter* v. *Pizzutti, supra,* the defendant did have notice of the pending suit, but challenged the validity of it. The decision of the St. Louis Court of Appeals transcends all of the holdings cited by it, garnered from other jurisdictions deemed in violation of the due process clause, by reason of the restrictive feature of the Missouri statute involved. The cases establish a dangerous precedent by nibbling away at an inalienable constitutional right.

This appeal was founded upon the basic fundamentals of law and justice that every person was entitled to his day in court. That petitioner was denied that right because respondent did not properly effectuate legal service under the statute. The decision adumbrates that a constitutional question was not raised at the first opportunity and when it was urged in the appellate court it was too late. It further held that the provision in the statute for mailing to the "last known address" indicated the legislature did not intend to make delivery of the notice essential to valid service. This was a surprise decision by reading into a clear and unambigious statute by judicial legislation a denial of a constitutional right, especially contrary to the provision of the statute that the mail must be "restricted to addressee only" and the return card must be filed in the case.

Magistrate courts in Missouri are courts of limited jurisdiction. *State ex rel. to the Use of Berra* v. *Sestric,* 349 Mo. 182, 159 S. W. 2d 786. They have no jurisdiction to construe the constitution of the United States or of this state. *Kleban* v. *Morris,* Mo. Sup., 247 S. W. 2d 832, 835 (1). No formal pleadings are required upon the part of either plaintiff or defendant, Section 517.050, Revised Statutes of Missouri, 1949. The St. Louis Court of Appeals has held, upon appeal from the magistrate court, though trial in the circuit court is conducted according to its practice, questions arising there as to pleadings must be determined by rules applicable to pleadings in the magistrate court, *Wood* v. *John Hancock Mut. Life Ins. Co.,* 241 S. W. 2d 802 (1), nor are the parties required to file any pleadings, *Holtzman* v. *Holtzman,* 278 S. W. 2d 1. The motion to quash filed in the magistrate court by petitioner raised the question of jurisdiction which was sustained by the magistrate. No other challenge could be made in the circuit court other than the matter urged in the magistrate court that petitioner was never given notice of suit. The circuit court could only hear argument on that point, and it overruled the motion to quash which was contrary to the ruling in the magistrate court. The first opportunity to spell out that petitioner was denied due process of law —notice of suit and an opportunity to defend—in violation of the Fourteenth Amendment to the United States Constitution, other than to urge he was never legally served under state decisions, was in the St. Louis Court of Appeals. The surprise decision of said appellate court was the first cause for alarm to petitioner that his constitutional right would be and actually was violated. As this Court said in *Wuchter* v. *Pizzutti,* 276 U. S. 13, l. c. 27: "We ought not to indulge the presumption either that the legislature intended to exceed the limits imposed upon state action by the Federal Constitution, or that courts of

a state will so interpret the legislation as to lead to that result." This Court has held that a federal claim first raised by petition for rehearing in a state court is in time for the purpose of review here if raised at the first opportunity, even though the petition was denied without opinion. *Brinkhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 680. Petitioner in his motion to quash the execution and garnishment stated that he had never been served with notice of suit which was apparent on the face of the record. This Court will not be controlled by the decision of the state court as to what form of language shall be used in pleading rights claimed under the Federal Constitution. *Rogers* v. *Alabama*, 192 U. S. 226, 230. A litigant is not bound to follow any particular words or phrases. *New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63, 67. This Court has said that although no particular form of words is necessary to be used in order that a Federal question may be involved, within the meaning of the cases on this subject, there yet must be something in the case before the state court which at least would call attention to the Federal question as one that was relied on by the party, and then, if the decision of the court, while not noticing the question, was such that the judgment was by its necessary effect a denial of the right claimed or referred to, it would be sufficient. It must appear from the record that the right set up or claimed was denied by the judgment or that such was its necessary effect in law. *Dewey* v. *Des Moines*, 173 U. S. 193, l. c. 199. The rule that, when the decision of a state court may rest upon a non-federal ground adequate to support it, this Court will not take jurisdiction to determine a federal question, has no application where, as here, the federal ground might have been considered but was not. *International Steel Co.* v. *Surety Co.*, 297 U. S. 657, 666; *Grayson* v. *Harris*, 267 U. S. 352, 358. It could not be reasonably anticipated that the

St. Louis Court of Appeals would so construe the statute as to discriminate against a citizen of another state, when the appeal was founded upon Missouri decisions cited to the court which hold that citizens of this state are entitled to notice of suit and an opportunity to be heard. Equal protection of the law should not be denied petitioner under the guise of legislative intention to deprive him of a right which would be repugnant to the Fourteenth Amendment. "The action of state courts in imposing penalties or depriving parties of other substantive rights without adequate notice and an opportunity to defend, has, of course, long been regarded as a denial of the due process guaranteed by the Fourteenth Amendment." *Shelley* v. *Kraemer*, 334 U. S. 1, l. c. 16, citing *Brinkhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 680, *supra*. Cf. *Pennoyer* v. *Neff*, 95 U. S. 714. Notice and an opportunity to be heard are essentials to due process. *Hansberry* v. *Lee*, 311 U. S. 32; *Standard Oil Co.* v. *Missouri*, 224 U. S. 270, 281-282.

CONCLUSION.

For the reasons set forth and because of the increasing number of suits instituted under the Nonresident Motorists Laws in the various courts of the respective states whose decisions are in conflict, petitioner believes these vital questions should be settled by this Honorable Court, and therefore prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A.

IN THE ST. LOUIS COURT OF APPEALS.

SEPTEMBER SESSION, 1956.

JIMMY WILLIAMS, (Plaintiff) Respondent, vs. MYRON T. SHROUT, (Defendant) Appellant.	No. 29,540. Appeal from the Circuit Court City of St. Louis. Hon. John K. Regan, Judge. **Opinion Filed** **September 18, 1956.**

This is an appeal by defendant from an order of the trial court overruling his motion to quash an execution. The judgment upon which the execution was obtained was rendered in a suit filed November 6, 1953, in the Magistrate Court of the City of St. Louis. The question presented is whether the judgment is void for want of valid service of process.

The action was for damages to plaintiff's automobile, arising out of a collision between said car and one being driven by defendant. The collision occurred at or near the intersection of Cole and Eleventh Streets in the City of St. Louis, Missouri. The petition alleged that the collision was due to the carelessness of defendant. The prayer of the petition was for damages in the sum of $200, and costs.

The defendant was a nonresident of the State of Missouri.

On November 9, 1953, a summons was issued for service upon defendant under the Nonresident Motorist's Law (Section 506.200 *et seq.*, R. S. Mo. 1949, V. A. M. S.). In said summons the defendant's address was given as Box 122,

East St. Louis, Illinois. By this summons defendant was commanded to appear before the Magistrate Court on the 1st day of December to answer the plaintiff's complaint. Upon this summons a return was made by the Sheriff of Cole County. This return recited that the writ had been executed November 10, 1953, by delivery of a copy of the writ and petition to Will Davis, the Chief Clerk to the Secretary of State, the latter being absent from Cole County at the time of said service.

On December 1, 1953, the cause, on plaintiff's motion, was continued to December 21, 1953. On the latter date an alias summons was ordered to be issued. This alias summons was thereafter issued on December 28th. It commanded the appearance of defendant to answer plaintiff's complaint on January 20, 1954. In said summons defendant's address was given as Box 81, East St. Louis, Illinois. Upon this summons a return was made by the Sheriff of Cole County. This return recited that the writ had been executed on January 11, 1954, by delivering a copy of the writ and petition to Will Davis, Chief Clerk to the Secretary of State, the latter being absent from Cole County at the time of said service.

On January 11, 1954, the Secretary of State, through his Chief Clerk, mailed to defendant a notice of the service of said summons, together with a copy of the writ and petition. These documents were sent by restricted registered mail to defendant at Box 81, East St. Louis, Illinois. In an affidavit of Will Davis, Chief Clerk, which was filed in said cause, it is stated that attached thereto was the statement from the postal authorities that the addressee could not be found.

On February 19, 1954, the cause was called for trial. Defendant failed to appear and a default judgment was ren-

dered in favor of plaintiff in the sum of $196.42, and costs. Thereafter, an execution was issued, and in aid thereof a writ of garnishment was sued out directed to Automotive Engraving Company as garnishee.

On October 1, 1954, defendant, through his counsel, entered a special appearance and moved to quash the execution and garnishment, on the ground that the "court had no jurisdiction over defendant in this suit as appears on the face of the record by the return filed by the Secretary of State of Missouri; that defendant was not served by process in this case and that he was not found." This motion was sustained by the Magistrate. Thereafter, an appeal was taken by plaintiff to the Circuit Court. The Circuit Court, by an order duly entered of record, overruled said motion. From said order, defendant appealed.

Appellant contends that the rendering of judgment without actual service of notice is a violation of his constitutional right to due process of law under the Fourteenth Amendment to the Federal Constitution.

If this constitutional question had been raised at the first opportunity, we would be without jurisdiction of the appeal. However, appellant failed to raise this constitutional question at the first opportunity. The point first appeared in appellant's brief filed in this court. This was too late. We therefore have jurisdiction of the appeal, and must determine whether actual delivery to defendant of the notice and suit papers was, under the terms of the statute, Section 506.240, R. S. Mo. 1949, V. A. M. S., essential to valid service. Said statute reads as follows:

> "2. The Secretary of State shall immediately mail to the defendant, and to each of them if there be more than one, by restricted, registered mail, addressed to the defendant at his last known address, residence or

place of abode a notice of such service and a copy of such process and petition."

The statute does not by its terms require actual delivery to defendant of the registered mail containing the notice and suit papers. Nor does it do so by implication. In fact, the provision for mailing to the "last known address" indicates that the Legislature did not intend to make delivery essential to valid service. Hendershot v. Ferkel, 144 Ohio St. 112, 56 N. E. 2d 205.

It is our opinion that actual delivery is not required by Section 506.240, supra, and that the service of process in this case was valid. Hendershot v. Ferkel, 144 Ohio St. 112, 56 N. E. 2d 205; Sorenson v. Stowers, 251 Wis. 398, 29 N. W. 2d 512; Morris v. Argo-Collier Truck Line et al., (Ky. D. C.) 39 F. Supp. 602; Wax v. Van Marter, 124 Pa. 573, 189 Atl. 537; Powell v. Knight et al., (Va. D. C.) 74 F. Supp. 191.

It is next urged that the so-called "Long Arm Statute" is not applicable to suits in Magistrate Courts. There is no merit to this contention.

The law is one of general scope, subjecting the nonresident to the jurisdiction—not of any particular court—but to the "jurisdiction of the courts of this state." In our view, the legislative intent was to extend the remedy to all courts having jurisdiction of the subject matter referred to in the statute, that is, actions for damages to persons or property arising out of the operation of motor vehicles by nonresidents upon the highways of this state.

Finding no error in the record, the judgment is affirmed.

Lyon Anderson,
Presiding Judge.

E. M. Ruddy, Judge, Concurs.

Elmo B. Hunter, Special Judge, Concurs.

APPENDIX B.

"Actions Against Nonresident Motorists.

506.200. Definitions.—1. The term **'person,'** as used in section 506.210, hereafter shall mean

(1) The owner of the motor vehicle or trailer, whether it is being used and operated personally by said owner or by his agent;

(2) An agent using and operating the motor vehicle or trailer for his principal;

(3) Any person who is in charge of the motor vehicle or trailer and of the use and operation thereof with the express or implied consent of the owner.

2. The term **'restricted, registered mail'** means mail which carries on the face thereof in a conspicuous place, where it will not be obliterated, the endorsement, "deliver to addressee only," and which also requires a return receipt or a statement by the postal authorities that the addressee refused to receive and receipt for such mail. (L. 1941 p. 435 §§3, 7)

506.210. Use of highways by nonresidents shall constitute an agreement.—The use and operation of a motor vehicle or trailer in this state on the public highways thereof by a person who is a nonresident of this state shall be deemed

(1) An agreement by him that he will be subject to the jurisdiction of the courts of this state over all civil actions and proceedings against him by either a resident or nonresident plaintiff, for damages to person or property,

including actions for death, growing or arising out of such use and operation; and

(2) An appointment by such nonresident of the secretary of state of Missouri as his lawful attorney and agent upon whom may be served all process in suits pertaining to such actions and proceedings;

(3) An agreement by such nonresident that any process in any suit so served shall be of the same legal force and validity as if personally served on him in this state. (L. 1941 p. 435 §1)

506.220. Provisions apply to former residents.—All provisions of sections 506.200 to 506.320 shall extend to and apply to any such person or persons, who, at the time that such right or cause of action arose, was or were residents of this state, but who have subsequently thereto become nonresidents of this state. (L. 1941, p. 435 §2)

506.230. Form of process.—All process in suits under sections 506.200 to 506.320 shall be in form and substance the same as now provided for in suits against residents of this state. (L. 1941 p. 435 §4)

506.240. Service of process.—1. Service of process under sections 506.200 to 506.320 shall be made by delivering a copy of the summons, with a copy of the petition attached, together with a remittance of one dollar, to the secretary of state of Missouri at his office, or in his absence, to the chief clerk of the secretary of state, at his office, and such service shall be sufficient service upon such nonresident.

2. The secretary of state shall immediately mail to the defendant, and to each of them if there be more than one, by restricted, registered mail, addressed to the defendant at his last known address, residence or place of abode a

notice of such service and a copy of such process and petition. (L. 1941 p. 435 §5, A. 1949 H. B. 2116)

506.250. Form of notification.—The notification provided for in section 506.240 shall be substantially in the following form, to wit:

To (here insert the name of each defendant and his residence, the last known place of abode as definitely as known), You will take notice that original process in suit against you, a copy of which is hereto attached, was duly served upon you at Jefferson City, Cole county, Missouri, by serving same on the secretary of state of the state of Missouri, or his chief clerk. Dated at _____ Missouri, this _____ day of _____ 19_____.

_____
(Secretary of state)

(L. 1941 p. 435 §6, A. 1949 H. B. 2116)

506.260. Notification other than by mail.—In lieu of mailing such notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by an adult person not a party to the suit by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept same, or by having said notification served on defendant by an officer duly qualified to serve legal process in the state or jurisdiction where the defendant is found and the officer's return showing such service to have been made filed in the case on or before the return day of the process, or within such further time as the court may allow. Upon such service a general judgment may be taken against defendant or defendants. (L. 1941 p. 435 §8)

506.270. Proof of mailing or delivery of notice.—Proof of the mailing or personal delivery of said notification to such nonresident by an adult person not an officer serving same shall be made by affidavit of the party doing said

acts. All affidavits of service shall be endorsed upon or attached to the original papers to which they relate and including the returned registry receipt shall be forthwith filed with the court in which such action is filed and pending. (L. 1941 p. 435 §9)

506.280. Provisions cumulative.—The foregoing provisions relative to service of process in suits against nonresidents shall not be deemed to prevent actual personal service in this state upon a nonresident in the time, manner, form, or under the conditions provided for service on residents, and nothing contained in sections 506.200 to 506.320 shall be construed as in any manner limiting, affecting or repealing any cause of action, right, or method of procedure now provided by law, but the provisions of said sections are cumulative and in addition to any such existing right, remedy, cause of action, and method of procedure. (L. 1941 p. 435 §10)

506.290. Venue for actions.—Any suit under the provisions of sections 506.200 to 506.320 shall be filed in the county in which the cause of action accrues or in the county where the plaintiff resides, and if there be other defendants in such action who are residents of the state of Missouri, then such action shall be brought in any county in which any one of said defendants reside, or in the county within which the plaintiff resides and the defendant may be found. (L. 1941 p. 435 §11, A. L. 1949 p. 328)

506.300. Continuance to be granted, when.—The court in which such action is pending shall grant such continuance to a nonresident defendant as may be proper to afford him reasonable opportunity to defend such action. (L. 1941 p. 435 §12)

506.310. Secretary of state shall keep records.—It shall be the duty of the secretary of state to keep a record of all

process served upon him, or his chief clerk, under the provisions of sections 506.200 to 506.320, which record will show the day and hour of service of every such process. (L. 1941 p. 435 §13)

506.320. Filing fee to be taxed as costs.—The fee of one dollar paid by plaintiff to the secretary of state under section 506.240 at the time of service of such process shall be taxed as part of plaintiff's costs if he prevails in the action or proceeding. (L. 1941 p. 435 §14)."

(Revised Statutes of Missouri, 1949.)

APPENDIX C.

"OFFICE OF THE SECRETARY OF STATE
JEFFERSON CITY

"To Myron T. Shrout Box 81; East St. Louis, Illinois,
Name of Defendant Last known residence or place of abode.

"You will take notice that original process in suit against you, a copy of which is hereto attached was duly served upon you at Jefferson City, Cole County, Missouri, by serving same on the Secretary of State of the State of Missouri, or his Chief Clerk.

"Dated at Jefferson City, Missouri, this 11th day of Jan. 1954.

/S/ Walter H. Toberman
Secretary of State

/S/ Will Davis
Chief Clerk

/S/ Jimmie Williams
Plaintiff

/S/ Samuel J. Goldenhersh
& Arthur Litz
Attorneys for Plaintiff

705 Chestnut Street, St. Louis, Mo.
Address of Attorneys for Plaintiff."

"Mailed by restricted registered United States mail 'Deliver to Addressee Only.' Process was served on Secretary of State or Chief Clerk on Jan. 11 1954 at _____"
(date) (hour)

"AFFIDAVIT

"State of Missouri,)
) SS.
County of Cole.)

The undersigned, _____, Secretary of State of Missouri, or his Chief Clerk, Will Davis, hereby makes oath and certifies that the original of above notice to defendant was mailed at the United States Postoffice in Jefferson City, Missouri, by restricted registered mail which carried on the face thereof in a conspicious place where it will not be obliterated the endorsement, 'Deliver to Addressee Only,' and which also required a return receipt or a statement by the Postal authorities that the addressee refused to receive and receipt for such mail, and that said notice was thus mailed on Jan. 11, 1954. Attached hereto is the return receipt therefor, or the notice of refusal of addressee to receive and receipt for such mail, or the statement from postal authorities that addressee could not be found."

/S/ Will Davis
Chief Clerk to the Secretary of State.

"Subscribed and sworn to before me at my office in Jefferson City, Cole County, Missouri, this 25th day of January, 1954.

/S/ Lillian Williams
(Seal) Notary Public

My Commission expires January 16, 1957."

(N. B. The last portion of the affidavit, "*or the statement from postal authorities that addressee could not be found.*" was underlined in ink to show the reason for non-delivery.)